Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

VANCE ROY CLARK,

PETITIONER,

vs.

MICHAEL GROOSE, GEORGE ADAMS, GERALD BOMMELL, JAMES EBERLE, JOHN SYDOW, DONALD KEMPKER, PETTERS, STANLEY CHRIS SWICORD,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. Whether the segregation of petitioner from the general prison population was arbitrary, purposeless, and punitive, and in violation of petitioner's procedural due process rights as prescribed in *Wolff vs. McConnell*, 418 U.S. 539 (1974) and secured by the Fourteenth Amendment to the Constitution of the United States.

II. Whether petitioner's complaint, suggestions in opposition and supporting affidavits presented the Court with a genuine issue as to material facts which, if true, should give rise to a violation of appellant's right to equal protection guaranteed by the Fourteenth Amendment to the Constitution of the United States.

III. Whether the District Court exceeded its discretion and deprived the petitioner of his right of access to the court system to seek redress of violation of his constitutionally protected rights in denying petitioner's Motion for Examination of Information Presented *In Camera*.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in this cause.

OPINIONS BELOW

The Report, Recommendation and Order of the United States Magistrate has not been reported. A copy is appended as Appendix 1.

The Order of the United States District Court of the Western District of Missouri has not been reported. A copy is appended as Appendix 2.

The Opinion of the United States Court of Appeals for the Eighth Circuit has not been reported. A copy is appended as Appendix 3.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on October 5, 1994.

Jurisdiction to issue the writ rests on Title 28, United States Code Annotated, Section 1254.

STATEMENT OF FACTS

Petitioner is an inmate in the Jefferson City Correctional Center currently serving a 37-year sentence for convictions of two (2) counts of sodomy, one (1) count of attempted rape and one (1) count of sexual abuse. From the time he was incarcerated until June 23, 1992, petitioner was confined to the general prison population, and had not received a single conduct violation. On June 23, 1992, a guard removed petitioner from his cell, and placed him in segregation. While in segregation, petitioner's access to the law library and to a telephone was significantly restricted. Later that day a case worker told petitioner that petitioner had been placed in segregation for violation of a Restraining Order. Petitioner denied any knowledge of the Restraining Order. Three (3) days later petitioner received a copy of the June 23 Temporary Administrative Segregation Confinement Order signed by respondent Adams which stated that petitioner was "witnessed by staff committing serious

wrong doings" and claimed that "petitioner presented an immediate security risk and that there was an urgent need to separate petitioner from others for his own safety and for that of others." On June 25, 1992, petitioner wrote to respondent Groose stating that he needed access to legal materials to assist his defense of a pending murder charge, and inquired as to why he was in segregation. Defendant Groose stated that petitioner was in segregation because of a pending first degree murder charge which was just discovered by the institution.

On June 29, 1992 petitioner appeared before an Adjustment Board for a Classification Hearing. Two (2) days later petitioner received the result of the Classification Hearing which stated petitioner was placed in segregation due to the pending charge of murder. No finding was made regarding petitioner's alleged serious wrong doings, nor was any finding made regarding the legitimacy of the segregation. On July 7, 1992 the petitioner appeared before another classification team, whose findings were that the Adjustment Board assigned the petitioner to segregation because of a pending murder charge. Petitioner told his attorney on July 8, 1992 that respondent Groose stated that the State of Missouri Prosecutor had called requesting that petitioner be segregated so that he would not have access to law books and legal materials. Petitioner obtained affidavits of other inmates of the Jefferson City Correctional Center who were not required to be held in segregation in spite of pending murder charges against them. Petitioner was not released from segregation until October 8, 1992.

The jurisdiction of the District Court was involved to determine a question of federal law, as plaintiff's complaint sought recovery for damages for the deprivation of rights and privileges served by the Constitution and laws of the United State pursuant to 42 U.S.C. Section 1983.

ARGUMENT

I. The segregation of petitioner from the general population was arbitrary, purposeless, and punitive, and in violation of petitioner's procedural due process rights as prescribed in *Wolff vs. McConnell*, 418 U.S. 539 (1974) and secured by the Fourteenth Amendment to the Constitution of the United States. *Wolff vs.*

McConnell, 418 U.S. 539 (1974) holds that an inmate is entitled to certain due process rights prior to the imposition of punishment for past misconduct. An inmate is to receive a written notice of charges, at least 24 hours prior to a hearing, a written statement prior to a hearing, a written statement by the fact finder as to the evidence relied upon and the reasons behind a threatened disciplinary action, the right of the inmate to be present, to call witnesses, and present evidence. *Wolff* at 564 to 570. Petitioner herein was placed in segregation for "committing serious wrong doings," yet was never presented with written notice of charges, or the facts which make up the wrong doings.

Prisoners have a protectable liberty interest in remaining in the general prison population. *Hewitt vs. Helms*, 459 U.S. 460 (1983). Because the segregation was punitive in nature, petitioner was entitled to the *Wolff* procedural protections. See *Brown-El vs. Delo*, 969 F. 2nd 644 (8th Circuit 1992). It is clear that the procedure given petitioner fell far short of that mandated by *Wolff*.

II. Respondents violated petitioner's rights to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution by placing him in administrative segregation. Affidavits submitted by petitioner clearly show random application of an unwritten prison policy of segregating all inmates with pending first degree murder charges. There must be some justification for treating individual prisoners differently from the general prison population. See *Lock vs. Jenkins*, 641 F. 2nd 488 (7th Circuit 1981) and Nash vs. Black, 781 F. 2nd 665 (8th Circuit 1986). Petitioner provided affidavits by inmates Charles Crawford and Danny Adams, both of whom had pending first degree murder charges but were not segregated. The Court below have failed to address this issue in granting the summary judgment for respondents and therefore erred.

III. The District Court exceeded its descretion and deprived petitioner of his right of access to the court system to redress violations of his constitutionally protected rights by denying petitioner's Motion for Examination of Information Presented to the Court *In Camera*. Petitioner claims that the prosecutor requested petitioner be placed in segregation in order to deny petitioner access to legal materials. Petitioner bases this assertion on the fact that his segregation followed closely petitioner's request of the prosecutor

for a speedy trial in the pending murder charge. See *State of Missouri ex rel. Clark v. Long*, 870 SW2d 932 (Mo. App. S.D. 1994). Documents were submitted to the Magistrate by the Attorney General's Office *In Camera*. Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, petitioner filed with the Magistrate a Request for Disclosure of the *In Camera* documents. The Court denied this request stating that the documents were merely background in nature. The fact that the documents were background in nature underscores the necessity for equal access afforded by discovery. Alternatively the Court said the documents were not necessary to the law suit. If this is true the Court overstepped its bounds in relying on irrelevant material in making its determination. Finally the Court stated that the petitioner could not see the documents because of their sensitive and confidential nature. According to Rule 26 anything not privileged can be discovered. No findings have been made that these documents are privileged as defined by the Federal Rules of Evidence. The fact that they may be sensitive in nature is not grounds for denying discovery under Rule 26. Even if the documents were privileged, the Court surely could excise those parts which are privileged and allow discovery of the remainder. The Court erred in not doing so, and the Eighth Circuit Court of Appeals erred in affirming this action.

CONCLUSION

Petitioner respectfully requests that the Supreme Court of the United States of America issue a Writ of Certiorari to the Eighth Circuit Court of Appeals to rectify the constitutionally illegal treatment of petitioner by the respondents.

Respectfully submitted,
WARTEN, FISHER, LEE AND BROWN

By 

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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

VANCE ROY CLARK,	)	
	)	No. 92-4340-CV-C-5
Plaintiff,	)	
	)	FILED
v.	)	AUG. 19, 1993
	)	1:30 P.M.
MICHAEL GROOSE, et al.,	)	R.F. CONNOR, CLERK
	)	U.S. DISTRICT COURT
Defendants,	)	WEST DISTRICT OF
	)	MISSOURI

REPORT, RECOMMENDATION AND ORDER

Plaintiff, an inmate confined in a Missouri penal institution, commenced this action under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. Following the filing of this cause, it was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and W.D. Mo. R. 22.

Defendants filed a motion for summary judgment, to which plaintiff responded and requested a copy of the *in camera* documents. Plaintiff's request for the *in camera* documents will be denied. The documents plaintiff seeks are merely background information for the above-styled cause and not necessary to this lawsuit. Furthermore, the documents were filed *in camera* due to their sensitive nature and to protect the confidentiality within the institution.

Fed. R. Civ. P. 56(c) requires "the entry of summary judgment...against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The burden on the party moving for summary judgment "is only to demonstrate...that the record does not disclose a genuine dispute on a material fact." *City of Mt. Pleasant, Iowa v. Associated Elec. Co-Op.*, 838 F.2d 268, 273 (8th Cir. 1988).

Once the moving party has done so, the burden shifts to the nonmoving party to go beyond his pleadings and show, by affidavit or by "depositions, answers to interrogatories, and admissions on file," that there is a genuine issue of fact to be resolved at trial. *Celotex*, 477 U.S. at 323. Evidence of a disputed factual issue which is merely colorable or not significantly probative, however, will not prevent entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Summary judgment, however, "is an extreme remedy, to be granted only if no genuine issue exists as to any material fact." *Hass v. Weiner*, 765 F.2d 123, 124 (8th Cir. 1985). In ruling on a motion for summary judgment, this court must view all facts in a light most favorable to the nonmoving party, and that party must receive the benefit of all reasonable inferences drawn from the facts. *Robinson v. Monaghan*, 864 F.2d 622, 624 (8th Cir. 1989).

If "there is no genuine issue as to any material fact and...the moving party is entitled to a judgment as a matter of law," the court must grant summary judgment. Fed. R. Civ. P. 56(c).

Plaintiff alleges his due process rights were violated when he was assigned to administrative segregation and received a "false" conduct violation.

Administrative segregation "involves the exercise of administrative judgment in determining whether an inmate should be segregated from the general population and predicting what he will probably do or have done to him if he is permitted to remain in population or to return to population after a period of segregation." *Kelly v. Brewer*, 525 F.2d 394, 400 (8th Cir. 1975). "[I]t may be used to protect the prisoner's safety, to protect other inmates from a particular prisoner, to break up potentially disruptive groups of inmates, or simply to await later classification or transfer." *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). And, "administrative segregation is the sort of confinement that inmates should reasonably anticipate receiving at some point in their incarceration." *Id.* Punitive segregation, on the other hand, involves the confinement of an inmate in a segregated unit for disciplinary purposes for his past misconduct. Punitive segregation triggers different due process considerations than those involved in administrative segregation because of the different purposes for each type of segregation.

Compare Hewitt with Wolff v. McConnell, 418 U.S. 539 (1974). *See also Jones v. Mabry*, 723 F.2d 590, 594-95 (8th Cir. 1983).

It is clear that "the transfer of an inmate to less amenable and more restrictive quarters for nonpunitive reasons is well within the terms of confinement ordinarily contemplated by a prison sentence." *Hewitt v. Helms*, 459 U.S. 460, 468 (1983). Under these circumstances, only an informal, nonadversarial review of the information supporting the transfer is required to satisfy due process. *Id.* at 472. Here, the transfer described by the parties seems to be analogous to the transfer issue in *Hewitt*.

A review of the documents reveals plaintiff received his procedural due process protections. Plaintiff's claim that defendants are at fault because they admitted they erred when they stated plaintiff was "witnessed by staff committing serious wrongdoing," is not actionable. The court notes that defendants also indicate plaintiff was placed in administrative segregation because he posed an immediate security risk and there was an urgent need to separate him from others. Any one of those reasons, alone, would have been sufficient to initially place plaintiff in administrative segregation. Therefore, defendants' inadvertent error is of no consequence.

As to plaintiff's claims of denial of due process, plaintiff was interviewed at the time of his placement in administrative segregation. Furthermore, plaintiff received periodic reviews while in administrative segregation. *See* defendants' exhibits 2-5. In addition, plaintiff utilized the grievance procedure, and while his grievance was denied, he was subsequently released from administrative segregation on October 8, 1992. *See* defendants' exhibit 6. Therefore, plaintiff's claims involving lack of due process must fail.

There is no evidence from which a jury could infer that plaintiff's due process rights were violated and therefore, summary judgment will be recommended granted. Plaintiff's assertion that he should not have been placed in administrative segregation merely because he had a pending first degree murder charge also fails. Prison administrators are "accorded wide-ranging deference in the adoption and execution of policies and practice that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security." *Bell v. Wofish*, 441 U.S. 520 (1979). *See also*

Turner v. Safley, 482 U.S. 78 (1987); *North Carolina Prisoners Labor Union*, 433 U.S. 119 (1977); *Procunier v. Martinez*, 416 U.S. 396 (1974); *Pell v. Procunier*, 417 U.S. 817 (1974), *cited in Bell v. Wolfish; Campbell v. Grammer*, No. 87-2680, slip op. (8th Cir. Nov. 21, 1989).

In light of the foregoing recommendation, defendants' motion to stay and plaintiff's motions to compel, to extend discovery, and for appointment of counsel will be denied as moot.

Plaintiff has filed a motion to amend. Fed. R. Civ. P. 15(a) provides that leave to amend shall be freely given when justice so requires. Plaintiff's motion will denied at this juncture. Plaintiff did not file his motion until defendants had completed discovery and filed their motion for summary judgment.

IT IS, THEREFORE, ORDERED that plaintiff's motion for leave to amend is denied. [32] It is further

ORDERED that defendants' motion to stay and plaintiff's motions to compel, to extend discovery, and for appointment of counsel are denied as moot. [30, 31, 33, 38] It is further

ORDERED that plaintiff's motion for a copy of the *in camera* documents is denied. [20]

Based on the foregoing and pursuant to the provisions of 28 U.S.C. § 636, it is

RECOMMENDED that defendants' motion for summary judgment be granted. [28]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to any or all of the foregoing recommendations within twenty (20) days of their receipt thereof. If additional time is needed to file exceptions, a motion requesting such time should be filed within said twenty days, giving the reasons for the request. *See Nettles v. Wainwright*, 656 F.2d 986 (5th Cir. 1981); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983); *Thomas v. Arn*, 474 U.S. 140 (1985); *Nash v. Black*, 781 F.2d 665 (8th Cir. 1986). The parties are advised that failure to make specific written exceptions to this Report and Recommendation may result in a waiver of their right to appeal.

Dated this 19th day of August, 1993.

S/WILLIAM A. KNOX
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

VANCE ROY CLARK,	)	
	)	No. 92-4340-CV-C-5
Plaintiff,	)	
	)	FILED
v.	)	NOV. 3, 1993
	)	9:00 A.M.
MICHAEL GROOSE, et al.,	)	R.F. CONNOR, CLERK
	)	U.S. DISTRICT COURT
Defendants,	)	WEST DISTRICT OF
	)	MISSOURI

ORDER

By report of August 19, 1993, the United States Magistrate Judge to whom this cause has been referred recommended that defendants' motion for summary judgment be granted. The parties were advised they could file written exceptions, pursuant to 28 U.S.C. § 636(b)(1)(C).

A *de novo* review of the record[1] in this case, including the exceptions filed by plaintiff on September 30, 1993, convinces the court that the recommendation of the Magistrate Judge is correct in all respects and should be adopted. There is no genuine issue as to any material fact; thus, defendants are entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c).

IT IS, THEREFORE, ORDERED that defendants' motion for summary judgment is granted and plaintiff's claims in the above-styled cause are dismissed. [28] It is further

ORDERED that plaintiff's motions for summary judgment, to release *in camera* information, and for disqualification of United States Magistrate Judge William W. Knox are denied. [45, 46, 47]

S/SCOTT O. WRIGHT
United States District Judge

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[1]Court proceedings, if any, are recorded by electronic recording equipment and the tapes are available for review by the court and counsel.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 94-1174

VANCE ROY CLARK	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	
	)	
MICHAEL GROOSE,	)	
GEORGE ADAMS,	)	
GERALD BOMMELL,	)	
JAMES EBERLE,	)	APPEAL FROM THE
JOHN SYDOW,	)	UNITED STATES
DONALD KEMPKER,	)	DISTRICT COURT FOR THE
PETTERS,	)	WESTERN DISTRICT OF
STANLEY CHRIS SWICORD	)	MISSOURI.
	)	
Defendants-Appellees,	)	[PUBLISHED]
	)	
JOHN DOE,	)	
	)	
Defendant.	)	

Submitted: September 14, 1994
Filed: October 5, 1994

Before FAGG, Circuit Judge, HEANEY, Senior Circuit Judge, and BOWMAN, Circuit Judge.

PER CURIAM.

Vance Roy Clark, a Missouri inmate, appeals the district court's order granting summary judgment in favor of the defendants in this 42 U.S.C. § 1983 action. We affirm.

On June 23, 1992, pursuant to an order from Michael Groose, Superintendent of the Jefferson City Correctional Center, Clark was placed in Temporary Administrative Segregation Confinement (TASC). Separate boxes were marked on the TASC form indicating that Clark was being placed in temporary administrative segregation because of a "serious wrongdoing" he was observed to have committed, the existence of an "immediate security risk," and the "urgent need" to separate him for his safety and that of the other inmates. Appellant's App. at 2. On June 29, 1992, Clark was brought before an Adjustment Board, which cited a pending first-degree murder charge as the reason for Clark's placement in temporary administrative segregation. A week later a classification team heard Clark's case and confirmed the Adjustment Board's finding that Clark was placed in TASC because of a pending first-degree murder charge.

Clark argues that (1) he was impermissibly placed in administrative segregation for punitive reasons; (2) the district court erred in refusing to disclose certain *in camera* documents; and (3) he was treated disparately in that he was held in administrative segregation when other inmates, who also had pending first-degree murder charges, were released into the general prison population.

It is well settled that an inmate is entitled to certain due process rights prior to the imposition of punishment for past misconduct. *Wolff v. McConnell*, 418 U.S. 539, 564-70 (1974); *Brown-El v. Delo*, 969 F.2d 644, 647 (8th Cir. 1992). Thus, an inmate facing disciplinary proceedings is entitled to, among other things, advance written notice of the claimed misconduct and a hearing at which he may call witnesses and present documentary evidence. *Wolff*, 418 U.S. at 562-67. However, provided the reasons for segregation are not punitive, an inmate may be placed in administrative segregation without a hearing,[1] unless a statute creates a liberty interest for the prisoner.

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[1]We note that prison officials cannot escape the procedural requirements of *Wolff* by labeling an inmate's segregation "administrative" when the reasons for the segregation would ordinarily entitle the inmate to the full protections of *Wolff*. The *reason* given by prison officials for segregating an inmate, not the label attached to the segregation, is what guides our analysis in cases such as this.

Hewitt v. Helms, 459 U.S. 460, 474-76 (1983); *Brown-El*, 969 F.2d at 647; *Haley v. Groose*, 873 S.W.2d 221, 223 (Mo. 1994) (en banc). A state statute creates such a liberty interest if it uses " 'mandatory language in connection with particularized substantive standards or criteria that significantly guide administrative decisions.' " *Haley*, 873 S.W.2d at 223 (quoting *Hewitt*, 459 U.S. at 472).

Under Missouri's relevant statutory provision, Mo. Ann. Stat. § 217.375.1,[2] the chief prison administrator's decision to place a prisoner in administrative segregation is discretionary. Therefore, "[b]y not using mandatory language in § 217.375.1, the General Assembly does not give [an inmate] a liberty interest in his initial placement in protective custody." *Id.* Under these circumstances, an inmate is entitled only to an informal, nonadversary review of the information supporting his transfer to administrative segregation within a reasonable time after being confined in order for due process to be satisfied. *Hewitt*, 459 U.S. at 472.

We review *de novo* a district court's grant of summary judgment. *Sperry v. Bauermeister, Inc.*, 4 F.3d 596, 597 (8th Cir. 1993). We find no evidence in the record that supports Clark's contention that he was placed in administrative segregation for punitive reasons. Clark relies on the fact that the TASC form listed a "serious wrongdoing" (an infraction that ordinarily would require a hearing) among the reasons he was assigned to administrative segregation when in fact he committed no wrongdoing, and information he received from his attorney that the State's prosecutor called Groose and asked that Clark be put in administrative segregation to impede his access to law books and legal materials.

Because the parties agree that that portion of the TASC form indicating that Clark was segregated because of a serious

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[2]Section 217.375.1 provides:

When an offender is an immediate security risk, or...is in urgent need to be separated from others for his own safety or that of others, or for the security and good order of the correctional facility, the chief administrative officer of the correctional facility or his designee may immediately place the offender in an administrative segregation unit which shall be situated so that the segregation of such offender from the other offenders...is complete. A review hearing shall be held concerning the incident within five working days.

wrongdoing was marked in error, we find no merit to Clark's argument that he was denied the due process protections normally afforded inmates charged with disciplinary violations. The other listed reasons for Clark's segregation, *e.g.*, the presence of an immediate security risk and the urgent need to separate Clark from the other inmates, are consistent with the classification team's finding that Clark was placed in TASC because of a pending first-degree murder charge. These listed reasons are consistent as well with information contained in *in camera* documents submitted to the district court which justify Groose's decision to place Clark in administrative segregation. We have reviewed the *in camera* material and, because of its sensitive nature, find that the court did not err in refusing to disclose its contents to Clark. We find no evidence in the record to support Clark's contention that he was placed in administrative segregation for the purpose of hindering his access to law books and legal materials.

Clark's argument that his equal protection rights were violated because he continued to be confined in administrative segregation when other inmates, who also had pending first-degree murder charges, were released into the general prison population is also without merit. Clark does not claim that prison officials treated him differently due to any suspect classification. Thus, he must prove that the distinction between himself and the other inmates was not reasonably related to some legitimate penological purpose. *See Turner v. Safley*, 482 U.S. 78, 89 (1987). Both the information continued in the *in camera* material and Clark's pending first-degree murder charge justify Groose's decision to place Clark in administrative segregation. Therefore, Clark is not similar in every relevant respect to the other inmates who were released into the general prison population.

The judgment of the district court, accordingly, is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.